



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92614; No. SR-NYSEArca-2021-69]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the NYSE Arca Options Fee Schedule

August 9, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 4, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective August 4, 2021. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to remove language associated with a fee waiver and a credit that expired at the close of business on June 30, 2021.

On March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective March 23, 2020, as a precautionary measure to prevent the potential spread of COVID-19. Following the temporary closure of the Trading Floor, the Exchange waived certain Floor-based fixed fees for April and May 2020.⁴ Although the Trading Floor partially reopened on May 4, 2020 and Floor-based open outcry activity was supported, certain participants were unable to resume pre-Floor closure levels of operations. As a result, the Exchange extended the fee waiver through June 2021, but only for Floor Broker firms that were unable to operate at more than 50% of their March 2020 on-Floor staffing levels and for Market Maker firms that had vacant or “unmanned” Podia for the entire month due to COVID-19 related considerations (the “Qualifying Firms”).⁵

Because the Trading Floor continued to operate with reduced capacity, the Exchange extended the fee waiver for Qualifying Firms through “the earlier of the first full month of a full reopening of the Trading Floor facilities to Floor personnel or June 2021”. The Trading Floor

⁴ See Securities Exchange Act Release Nos. 88596 (April 8, 2020), 85 FR 20796 (April 14, 2020) (SR-NYSEArca-2020-29); 88812 (May 5, 2020), 85 FR 27787 (May 11, 2020) (SR-NYSEArca-2020-38).

⁵ See Securities Exchange Act Release Nos. 89038 (June 10, 2020), 85 FR 36447 (June 16, 2020) (SR-NYSEArca-2020-52); 89242 (June 7, 2020), 85 FR 42037 (July 13, 2020) (SR-NYSEArca-2020-60); 89480 (August 5, 2020), 85 FR 48591 (August 11, 2020) (SR-NYSEArca-2020-69); 89694 (August 27, 2020), 85 FR 54608 (September 2, 2020) (SR-NYSEArca-2020-76); 90191 (October 15, 2020), 85 FR 67032 (October 21, 2020) (SR-NYSEArca-2020-90); 90838 (December 31, 2020), 86 FR 657 (January 6, 2021) (SR-NYSEArca-2020-115), 91372 (March 18, 2021) 86 FR 15980 (March 25, 2021) (SR-NYSEArca-2021-18).

re-opened without social distancing requirements for vaccinated personnel on May 12, 2021.

Additionally, in May 2021, the Exchange implemented an incentive to encourage Floor Brokers to increase their Professional Customer billable volume.⁶ Specifically, the Exchange offered Floor Brokers a credit of \$0.13 per contract for each billable Professional Customer contract that exceeded a baseline average daily volume for the month. This fee incentive was adopted with a stated expiration at the close of business on June 30, 2021.

As the expiration date for both the fee waiver and the fee incentive has passed, the Exchange is submitting this proposed rule change to remove language related to the fee waiver and the fee incentive from the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁸ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed modifications to the Fee Schedule to remove an expired fee waiver and an expired fee incentive that the Exchange no longer offers are reasonable, equitable, and not unfairly discriminatory because the changes would provide clarity to the Fee Schedule, and do not affect any current activity by any OTP Holder or OTP Firm.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or

⁶ See Exchange Act Release No. 91936 (May 19, 2021) 86 FR 28178 (May 25, 2021) (SR–NYSEArca–2021–41).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

appropriate in furtherance of the purposes of the Act. Instead, the proposed change is meant to add clarity and transparency to the Fee Schedule to the benefit of all market participants that trade on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-69 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2021-69. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2021-69, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

¹² 17 CFR 200.30-3(a)(12).

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-17304 Filed: 8/12/2021 8:45 am; Publication Date: 8/13/2021]